IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2825 OF 2004

IN

SUIT NO.2814 OF 2004

...

Mr.Tony Francis Guinness ...Plaintiff

v/s.

Indekka Software Pvt.Ltd.
and ors. ...Defendants

...

Mr.Akshay Patil with Mr.Leon Samuel and Ms.Deepti Chand i/b M/s.Advani & Co. for the Plaintiff.

Mr.Gautam Mehta with Ms.S.S.Srikrishna and Ms.Nandini Gidwaney i/b Kanga & Co. for Defendants Nos. 1 to 3.

Ms.Alpana Ghone i/b Fatima Diamondwala for Defendant No.4.

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CORAM: D.K.DESHMUKH, J.

DATED: 29TH SEPTEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed the suit, basically, challenging the allotment of preferential shares of the Defendant No.1 company. Admittedly, the resolution for the allotment of the shares which is subject matter of the suit was passed on 23-12-2002. The learned Counsel appearing for the Plaintiff submits that the validity of allotment was challenged on two grounds; (i) that the resolution dated 23-12-2002 is not valid because that resolution was passed without giving notice of the meeting of the Board of Directors dated 23-12-2002 either to the Plaintiff or his representative directors. (ii) Secondly according to the Plaintiff under the

Articles of Association, 50% of the shares to be allotted should have been offered to the Plaintiff. That offer has not been made.

2. I have heard the learned Counsel for the Plaintiff. He is not able to show me averments in the plaint to the effect that the notice of meeting of Board of Directors dated 23-12-2002 was not issued to the Plaintiff or his nominee on the Board of Directors. He is also not able to show averments in the plaint showing that 50% of the shares were not offered to him. It is the case of the Plaintiff that because for considerable length of time the Plaintiff was in hospital receiving treatment for his ailments he was not aware of the developments about allotment of the shares. I find that the Plaintiff has not been able to make strong prima facie case entitling the Plaintiff to any interim order. Notice of Motion is, therefore, disposed of.

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